May 30, 2001

Cambridge Electric Light Company D.P.U./D.T.E. 94-101/95-36

Massachusetts Institute of Technology

Massachusetts Institute of Technology D.P.U./D.T.E. 97-14

Boston Edison Company D.T.E. 99-19

Cambridge Electric Light Company

Commonwealth Electric Company

Commonwealth Gas Company

I. INTRODUCTION

On December 19, 2000, Cambridge Electric Light Company ("Cambridge" or "Company") with the assent of the Massachusetts Institute of Technology ("MIT") [jointly the "Parties"] submitted for approval by the Department of Telecommunications and Energy ("Department") a Motion for Approval of a Settlement Agreement ("Motion") and a Settlement Agreement ("Settlement"). The Settlement is intended to: (1) resolve all disputes between the Company and MIT in specific Department dockets;[(1)] and (2) permit the inclusion of $468,185 (which represents excess fuel charge expenses already credited to retail customers through the Company fuel charge) in the Company's transition charge.

II. PROCEDURAL HISTORY

In May 1994, MIT asked the Department to establish auxiliary qualifying cogeneration facility ("QF") rates since MIT had developed its own QF. The Department's investigation into the propriety of auxiliary rates to serve MIT's QF was docketed as D.P.U. 94-101.

On March 15, 1995, the Company filed tariffs, including a proposed Customer Transition Charge ("CTC"). As proposed by the Company, the CTC would be paid to Cambridge by any of Cambridge's seven largest customers, in the event those customers departed the system. The theory behind the CTC was that the loss of large customers would result in significant revenue deficiencies to the Company, which, in turn, could have a detrimental effect on the remaining customers. The Department's investigation into those tariffs was docketed as D.P.U. 95-36.

On March 23, 1995, the Department suspended the tariffs and consolidated dockets D.P.U. 94-101 and D.P.U. 95-36.[(2)] On September 28, 1995, the Department issued an order approving a CTC of $5.62 per kVA. On October 19, 1995, MIT filed a Petition for Appeal of the Department's decision to the Supreme Judicial Court ("Court").[(3)] On September 18, 1997, the Court reversed and remanded the Department's Order finding that the Department failed to (1) justify the Company's calculations of its stranded costs; (2) explain why an allocation to MIT of 75% of the stranded costs was reasonable; and (3) explain why it determined that the stranded costs for which the company now seeks relief were prudently incurred. Massachusetts Institute of Technology v. Department of Public Utilities, 425 Mass. 856 (1997) ("SJC Decision").

On remand, the Department held a procedural conference on August 27, 1998, requesting that the Company and MIT provide revised calculations of the CTC. The Company provided a revised CTC of $8.61 per kVa/month and calculated that the net unrecovered stranded costs for the period between October 1995, when MIT initiated its QF, and February 1998, the effective date of competitive generation in accordance with the Electric Restructuring Act, totaled $1.7 million. On October 8, 1998, MIT and the Company submitted documentation to the Department concerning the calculation of a CTC.

No further action on this matter occurred until December 19, 2000, when Cambridge and MIT jointly filed the Settlement Agreement. On January 22, 2001, the Attorney General filed his Objection to the Motion for Approval of Settlement Agreement. Cambridge and MIT responded to the Attorney General's objection on January 25, 2001.

III. SETTLEMENT AGREEMENT

Under the Agreement, the Company would refund to MIT $1,665,000 of the $2,572,565 collected by the Company from MIT in the CTC as a result of MIT's termination of total requirements service (Settlement at §2.1). The Settlement also states that Cambridge would be authorized to fully recover, in its transition charge, $468,185 of past MIT CTC revenue that been credited to retail customers in anticipation of Cambridge's collecting the amount from MIT (id.). Specifically, Cambridge claims that as a result of the Settlement Agreement, the net MIT CTC revenue will be $907,565 ($2,572,565 paid by MIT less the settlement refund of $1,665,000) and that the fuel adjustment allocation of 20.9% will be $189,499 (id. at §1.24). The 20.9 percent fuel adjustment allocation represents MIT's payment of the fixed-cost-related fuel charge expenses already credited to customers through the Company's fuel charge (id.).

IV. COMMENTERS

A. The Attorney General

The Attorney General opposes the Settlement Agreement and argues that (1) the record does not provide an adequate basis for the Department to find that $907,565 of Cambridge's costs were stranded as a result of MIT's installation of a cogeneration facility; (2) the record does not provide an adequate basis for the Department to find that any costs stranded a result of MIT's installation of a cogeneration unit were prudently incurred or mitigated; (3) recovery of the $468,185 through the Company's transition charge is prohibited; and (4) neither the record nor the Settlement Agreement provide an adequate basis for any allocation of "stranded costs" recoveries (Attorney General's Comments at 7-11).

The Attorney General states that, pursuant to the Court's directives, the Department must determine the appropriate amount of stranded costs and the allocation of those costs after specific findings are made that the costs were verifiable, prudent, and reasonable (id. at 6-7). Moreover, the Attorney General states that the costs must be recovered from the parties to whom they are attributable -- mainly the departing customers, and not the utilities' remaining ratepayers (id.). The Attorney General submits that the proposed Settlement Agreement does not provide the necessary evidence to make these findings and that the Department must hold hearings in order to scrutinize the information provided in the Settlement or in the Company's CTC calculation (id. at 7).

The Attorney General contends that neither the Company nor MIT has offered any additional evidence to demonstrate that the stranded costs were incurred prudently (id. at 8). In fact, the Attorney General argues that as a condition of any recovery by Cambridge of any stranded costs from MIT, the Department must explain why those stranded costs were prudently incurred (id. at 9). The Attorney General notes that the Department must investigate what steps the Company took to mitigate its costs, particularly in light of the advance notice that the Company had of MIT's departure (id. at 9-10). The Attorney General states that information on cost mitigation is not contained in the Settlement Agreement or in the record (id. at 10).

The Attorney General also submits that the Department should reject the Company's proposal to recover through its Transition Charge, the $468,185 proposed refund to MIT because the refund does not fall within the statutory criteria for "transition costs" as defined in G.L. c. 164, 1G(b)(1)(i). The Attorney General notes that the Department has found that the CTC tariff was not filed as a result of industry restructuring (id. at 10). Therefore, he argues that the costs should not qualify for recovery pursuant to the Electric Restructuring Act (id.).

Finally, the Attorney General states that the Company's request to recover 20.9 percent of the stranded costs attributable to MIT is not supported by record evidence (id. at 11). The Attorney General states that just as the Court rejected the Department's allocation of stranded costs based on lack of evidentiary support, the settlement should be rejected for lack of support for the calculation of the 20.9 percent allocation (id.).

B. The Parties

In response to the Attorney General's opposition to the Settlement Agreement, the Parties state that the Attorney General's claims are based on his erroneous belief that Cambridge ratepayers will be charged for the lost revenues that resulted from MIT's leaving the Company's system (Parties' Response at 2). Instead, the Parties contend that the purpose of the CTC is to collect costs from the departing customer, rather than from those customers remaining on the system (id. at 2-3). This, the Parties note, is precisely what the Court directed in its decision when it cautioned the Department that any customer transition charge must be recovered from the parties to whom the costs are attributable and not the utilities' remaining ratepayers (id. at 4). The Parties note that the Company has not sought, and is not seeking, to collect unmitigated stranded costs from its remaining customers (id.). Thus, the Parties argue, that regardless of whether the proposed calculations of the CTC and stranded costs are correct, there is no impact whatsoever on other customers (id.).

The Parties also contend that the $468,185 refund to the Company is appropriate (id. at 5). The Parties explain that the Company credited customers this amount in anticipation of fuel charge revenue that was to be collected from MIT (id.). The CTC, as billed by the Company, amounts to $3,149,829 and the Company has in the past credited to customers through the fuel charge $657,685 (id.). This represents 20.9 percent of the CTC, which constitutes MIT's payment of the fixed-cost-related fuel-charge expenses (id.). Because under the Settlement Agreement the Company will only collect $907,565 from MIT, customers should have been credited only 20.9 percent of the $907,565 (id.). This requires a refund to the Company of $468,185 (id.). Without this refund, customers would have been advanced money through the fuel charge for contributions from MIT that were not ultimately received (id.).

Finally, the Parties state that the Attorney General's claim that recovery of the Fuel Charge Excess Credit through the transition charge is statutorily prohibited, lacks merit (id. at 5-6). The Parties argue that the use of the transition charge mechanism to perform the reconciliation of the credit is not meant to imply that the underlying costs meet the statutory definition of a transition charge (id. at 6). Instead, the Parties opine that the transition charge, like the fuel charge before it, is a reconciling charge that is applied to all of the Company's customers (id.). The Parties contend that the use of the transition charge mechanism in this case is for administrative convenience (id.).

IV. ANALYSIS AND FINDINGS

The Department notes that in assessing the reasonableness of an offer of settlement, we

must review the entire record as presented in the Company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and the public interest, and results in just and reasonable rates. See Western Massachusetts Electric Company, D.P.U. 94-8C-A/D.P.U. 95-8C-1/D.P.U. 96-8C-1, at 9 (1996); Barnstable Water Company, D.P.U. 91-189, at 4 (1992). In evaluating this Settlement

Agreement to determine its reasonableness, the Department is cognizant of the directives given to us by the Supreme Judicial Court. Specifically, the Court stated that the record evidence was not complete and directed the Department to make subsidiary findings concerning the calculation of stranded costs, whether such costs were prudently incurred, and how the Company attempted to mitigate those costs.

Pursuant to the Settlement, the Parties calculated the stranded costs that resulted from MIT's installation of a cogeneration facility to be $907,565.00. In its remand order, the Court stated its concern that the Department did not adequately explain the reason why we accepted the Company's CTC calculation yet rejected the calculation presented by MIT. By settling this matter, the Parties have effectively agreed on the reasonableness of the stranded costs calculation. By its definition, the CTC is paid by MIT to the Company; the Company is not entitled to recover MIT-related stranded costs from its other retail customers. Thus, the Department notes that the Court's concerns regarding the calculation of the CTC and the actions taken by the Company to mitigate the costs associated with MIT's departure from Cambridge's system are addressed and resolved in the Settlement.[(4)]

However, the Department concludes that the Settlement Agreement, which would allow the Company to recover $468,185 of fuel adjustment credits through the transition charge, is not appropriate. The CTC was an ad hoc feature fashioned to settle a dispute between Cambridge and MIT in the very early stages of the electric restructuring effort in Massachusetts. Ad hoc mechanisms have been overtaken by events, especially by the definitive event of St. 1997, c. 164. The Department further notes that the CTC was not submitted as part of the Company's restructuring filing. Accordingly, because the refund neither falls within the express statutory criteria for "transition costs", as defined in G.L.

c. 164, 1G(b)(1)(i), nor qualifies for allowance as a recognized feature of the Company's "substantially compliant" restructuring plan **(**Commonwealth Electric Company/Cambridge Electric Light Company, D.P.U./D.T.E. 97-111 (1998)), the Department declines to approve the $468,185 recovery.

By its terms, the Agreement requires the Department to approve or reject the Settlement as a whole. The Department declines to be so bound: we find no objection to the remaining features of the Agreement and see no reason why the Parties should not be allowed to settle their long-standing dispute on the terms they have jointly fashioned, if they wish to make peace on those terms -- saving, of course, our express disallowance of recovery of the $468,185 in fuel adjustment charges through the transition charge. That point apart, the Agreement does not offend any regulatory principle or statute and would be allowed in accordance with our standard as a settlement of all issues in this docket. The Parties need only so signify to the Department within ten days following issuance of this Order.

The Department appreciates the Parties' efforts to work towards an effective resolution of the difficult issues confronting them in this matter. To that end, we encourage the Parties to submit an amended settlement agreement in accordance with the findings delineated in this Order or, in the alternative, to submit a statement by the Company (with the assent of MIT), accepting the terms and exceptions of this Order as a full settlement of their dispute.

V. ORDER

Accordingly, after consideration and review, the Department

ORDERED: That the Motion for Approval of a Settlement Agreement and a Settlement Agreement submitted by Cambridge Electric Light Company with the assent of the Massachusetts Institute of Technology is allowed subject to (a) disallowance of recovery of the $468,185 in fuel adjustment changes through the transition charge and (b) a filing by the Company, with MIT's assent, that it accepts the terms of this Order; and it is

FURTHER ORDERED: That, failing signification of acceptance by the Parties within ten days following this Order, the Hearing Officer shall, by the thirtieth day following, establish a procedural schedule designed to resolve this matter.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

1. Cambridge Electric Light Company and Massachusetts Institute of Technology, D.P.U./D.T.E. 94-101/95-36; Massachusetts Institute of Technology, D.P.U./D.T.E. 97-14; and Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, and Commonwealth Gas Company, D.T.E. 99-19.

2. In addition to resolving all issues in D.P.U. 94-101 and 95-36, approval of the Settlement Agreement would also resolve disputes between the settling parties in D.P.U./D.T.E. 97-14 (MIT's petition to terminate the application of the CTC) and D.T.E. 99-19 (Petition by Cambridge Electric Light Company, Commonwealth Electric Company, Commonwealth Gas Company and Boston Edison Company for approval of a rate plan regarding the proposed merger of BEC Energy and Commonwealth Energy System).

3. On January 3, 1996, MIT, the Company, and the Department entered into a Joint Motion for Approval of Stipulation for Stay Pending Appeal. Under the Stipulation, MIT agreed to pay the CTC as billed by the Company during the pendency of the appeal, subject to refund. The Stipulation was allowed by a Single Justice of the Court without a hearing.

4. In its decision, the Court directed the Department to explain why an allocation of 75% of the stranded costs to MIT was not arbitrary. In its Settlement, the Parties reach resolution of the stranded costs amount, without allocating the costs between them.